(6)

No. 05-1240

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IN THE

Supreme Court of the United States

ANDRE WALLACE,
Petitioner,

v.

CHICAGO POLICE OFFICERS
KRISTEN KATO and EUGENE ROY,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

When does a claim for damages arising out of a false arrest or other search or seizure forbidden by the Fourth Amendment accrue when the fruits of the search were introduced in the claimant's criminal trial and he was convicted?

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STATEMENT

On January 17, 1994, John Herbert Handy ("Handy") was murdered in the City of Chicago. R. 31 ¶ 7. On January 19, 1994, respondents, Chicago Police Detectives Kristen Kato and Eugene Roy, were assigned to investigate the murder. *Id.* ¶ 5. As part of their investigation, on the evening of January 19, 1994, Detectives Kato and Roy approached petitioner, Andre Wallace, and brought him to the police station for questioning, where he informed the detectives that he was seventeen years old. *Id.* ¶¶ 18-20, 23-24, and attached Exh. 1 ¶¶ 3, 5. After questioning petitioner over the course of the evening, and after following up on leads stemming from the interview of petitioner and others, Detectives Kato and Roy confronted petitioner with the statements of other interviewees. *Id.* ¶¶ 24, 26-31, 33, and attached Exh. 1 ¶ 5. Petitioner then informed the detectives that he was fifteen years old, after which they called in a youth officer and an assistant state's attorney. *Id.* ¶¶ 34-35. The assistant state's attorney prepared a handwritten statement, which petitioner signed, admitting to Handy's murder. *Id.* ¶¶ 35-36.

As part of the pretrial proceedings in petitioner's prosecution for murder, he filed two motions to suppress—a motion to quash arrest and suppress evidence, and a motion to suppress statements. R. 33 ¶ 45; R. 37, attached Exhs. D1 & D2. The motion to quash arrest and suppress evidence contended that his inculpatory statements were inadmissible as the fruit of an unlawful arrest. R. 37, attached Exh. D2. The motion to suppress statements contended that Detective Kato had employed physical and psychological coercion to obtain petitioner's confession. *Id.*, attached Exh. D1. The Circuit Court of Cook County conducted several days of hearings on the motions and then heard argument. R. 33 ¶¶ 46-54. The court denied both motions, as well as petitioner's request for reconsideration. *Id.* ¶¶ 55-56.

Petitioner was then tried to the bench. During his trial, he did not argue that he was innocent. R. 33 ¶ 57. Rather, in argument through counsel, petitioner admitted shooting Handy, claiming that he did so in self-defense or, alternatively, in mutual combat, and therefore should be found guilty of only second-degree murder. *Ibid.* Petitioner was convicted of first-degree murder. *Ibid.*

On appeal, the Illinois Appellate Court held that at some point after arriving at the police station and before giving his confession, petitioner was illegally seized. R. 33 ¶ 58. The court remanded for a hearing on whether petitioner's confession was sufficiently attenuated from the unlawful arrest to be admissible. *Ibid.* Petitioner had not argued on appeal that his confession was the product of police coercion, and the appellate court did not review the circuit court's finding that it was not. *Ibid.* After an attenuation hearing, the circuit court held that petitioner's confession was admissible, but the appellate court again reversed. R. 31 ¶¶ 41-42. The court held that the confession was insufficiently attenuated from the unlawful arrest, and remanded for a new trial without the confession. J.A. 34-35. The prosecution then moved to *nolle prosequi* the case against petitioner on April 10, 2002. R. 31 ¶ 43. The prosecutor later explained that she had made this motion because petitioner's confession had been deemed inadmissible, and that the prosecution intends to reinstate the murder charges against petitioner if additional evidence against him is obtained. R. 11, attached Exh. C ¶¶ 6-8.

On April 2, 2003, petitioner filed suit against Detectives Kato and Roy and the City of Chicago, alleging a deprivation of his rights under the Fourth and Fourteenth Amendments to the Constitution and seeking redress under 42 U.S.C. § 1983. R. 1-1. The complaint also alleged that the detectives had committed the state-law torts of false imprisonment and malicious prosecution. *Ibid.* The district court granted summary judgment in favor of the defendants on all claims except for what petitioner called a "federal denial of a fair

trial claim." Pet. App. 33-35.[1] Because the contours of the fair trial claim were "not readily apparent from the complaint" (*id.* at 35), the court denied the summary judgment motion with respect to that claim without prejudice (*id.* at 36). About petitioner's other claims, the district court determined that his state-law false imprisonment claim was barred by the statute of limitations (*id.* at 34-35), while petitioner had conceded both that his remaining section 1983 claims were time barred and that his malicious prosecution claim was flawed and should be dismissed with prejudice (*id.* at 33-34). In particular, petitioner had acknowledged in his response to the summary judgment motion that the fact that the criminal proceedings were not terminated in a manner indicative of his innocence was "fatal to his state-law malicious prosecution claim." R. 17 at 3.

Petitioner then filed an amended complaint against only Detectives Kato and Roy, alleging that they had violated his Fourth and Fourteenth Amendment rights by unlawfully arresting him and coercing a false confession. R. 25. The district court entered summary judgment in favor of the detectives on all claims. Pet. App. 37-52. The court found that petitioner's Fourth Amendment false arrest claim was waived and time barred, that any claim based on his allegedly coerced confession was barred by collateral estoppel because the state court had found his confession to be voluntary, and that his denial of a fair trial claim was not cognizable. *Id.* at 43-52.

The court of appeals affirmed. Pet. App. 1-18. With respect to petitioner's Fourth Amendment false arrest claim, the court held that the claim accrued at the time of petitioner's arrest and was therefore time barred. *Id.* at 6-16. In so doing,

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[1] Because the district court granted summary judgment against petitioner, we take the facts most favorably to him for present purposes. See, *e.g.*, *Davis v. United States*, 495 U.S. 472, 485-86 (1990); *Scindia Steam Navigation Co. v. Lauro De Los Santos*, 451 U.S. 156, 159 (1981).

the court overruled inconsistent Seventh Circuit precedent and indicated that the panel's opinion had been circulated to the en banc court. *Id.* at 2 & n.*, 13. With respect to petitioner's coerced confession claim, the court rejected the existence of a "stand-alone 'false confession' claim based on the Fourth Amendment, rather than the Fifth Amendment or the due process clauses." *Id.* at 16-17. Finally, the court rejected petitioner's claim asserting that his allegedly false confession violated his Fourteenth Amendment right to a fair trial. *Id.* at 17-18. Judge Posner dissented from the denial of rehearing en banc on the holding that a Fourth Amendment claim accrues at the time of an allegedly false arrest, arguing that such a claim "*usually* accrues then, but not if the Fourth or Fifth Amendment claim, if valid, would upset the [federal plaintiff's] conviction." *Id.* at 19 (emphasis in original).

This Court granted the petition for certiorari limited to the question "[w]hen does a claim for damages arising out of a false arrest or other search or seizure forbidden by the Fourth Amendment accrue when the fruits of the search were introduced in the claimant's criminal trial and he was convicted?"

SUMMARY OF ARGUMENT

Petitioner's claim that the detectives violated his Fourth Amendment rights by holding him for questioning without probable cause is time barred. He waited nine years after his allegedly unlawful arrest to bring this lawsuit, while the applicable statute of limitations is two years.

A claim accrues, for limitations purposes, as soon as the plaintiff experiences an injury for which he has a right to seek relief. In this case, as soon as petitioner was held without probable cause, his Fourth Amendment rights were violated, and he had a right to recover damages, regardless of whether he was later prosecuted or convicted as a consequence of his arrest. Although petitioner describes the entire course of

his prosecution in state court as a "continuing" violation of the Fourth Amendment, the Fourth Amendment forbids not unwarranted prosecutions but "unreasonable searches and seizures." U.S. Const. amend. IV. At most, the criminal prosecution that was occasioned by petitioner's arrest was an adverse consequence of that arrest, but it is well settled that even where damages caused by illegal conduct continue to mount for some time after the conduct has ended, that does not delay the running of the statute of limitations.

Heck v. Humphrey, 512 U.S. 477 (1994), on which petitioner so heavily relies, did not change this settled rule. In *Heck*, the Court, seeking to reconcile section 1983 with the law of habeas corpus, explained that a section 1983 claim may go forward notwithstanding an extant conviction so long as the claim, if successful, would not necessarily imply the invalidity of the conviction. A Fourth Amendment claim does not necessarily imply the invalidity of a conviction. It is well established that an unconstitutional arrest is no bar to an ensuing prosecution. And because Fourth Amendment claims are not cognizable in habeas, there is no justification for delaying accrual of section 1983 actions until a claimant has sought habeas relief. Moreover, the rule advocated by petitioner and the dissenting judge below—delaying accrual when a Fourth Amendment claim seeks suppression of evidence critical to the underlying criminal prosecution—would be unworkable. As the court of appeals explained, a potential section 1983 plaintiff cannot know until his case is tried whether evidence derived from an alleged Fourth Amendment violation will be critical to the prosecution's case against him.

As for petitioner's complaint that the court of appeals' holding will provoke parallel state and federal litigation with disruptive results, parallel litigation is common. It is appropriately addressed not by manipulating the law of accrual, but through other doctrines—abstention in cases where federal civil litigation may interfere with an ongoing

state prosecution; preclusion in cases in which a federal plaintiff seeks to relitigate an issue already decided against him in state court; and equitable tolling in cases in which the plaintiff could not reasonably have been expected to bring suit in a timely fashion. Petitioner's proposed rule, in contrast, will promote the litigation of stale claims and contravenes the settled rule that as soon as a plaintiff suffers a legally cognizable injury—such as a false arrest—the applicable limitations period begins to run.

There is an additional flaw in petitioner's position. Both his argument that his Fourth Amendment claim did not accrue upon his arrest because he seeks damages attributable to his state-court prosecution, and his reliance on claims for false imprisonment, malicious prosecution, and attorney malpractice to recover these damages under the Fourth Amendment, are unfounded.

At the outset, as we explain above, the fact that a claimant continues to experience an injury for which damages are recoverable is not relevant to determining when a cause of action accrues. Thus, the damages recoverable on a Fourth Amendment claim do not govern the question when that claim accrues. But even putting that to the side, there is no support for petitioner's view of the damages that are recoverable on a Fourth Amendment claim.

Petitioner relies on the common-law tort of false arrest and imprisonment to support his view that the entirety of the criminal proceedings against him constitutes a legal wrong for which he can recover damages once those proceedings terminate, but this tort does not allow recovery of damages associated with a criminal prosecution, as this Court explained in *Heck*. As for petitioner's reliance on the common-law rules governing actions for malicious prosecution and attorney malpractice, a necessary element of these torts is a favorable outcome of antecedent legal proceedings. Again, the Fourth Amendment regulates search and seizure, not

criminal prosecutions. Fourth Amendment claims do not rest on antecedent legal proceedings; accordingly, neither malicious prosecution nor attorney malpractice is analogous to a section 1983 Fourth Amendment claim.

Even apart from the lack of common-law analogues that support petitioner's theory of accrual for a section 1983 Fourth Amendment claim, that claim is not properly understood to permit recovery of damages caused by a criminal prosecution. The damages recoverable under section 1983 are appropriately determined by reference to the underlying interests protected by the constitutional tort at issue. This approach provides no support for petitioner's theory that the Fourth Amendment permits recovery of damages arising from a criminal prosecution that was allegedly caused by an improper arrest. As we have explained, the Fourth Amendment protects against unreasonable searches and seizures, not unwarranted prosecutions. And because the interest in being free from prosecution is not one the Fourth Amendment protects, damages associated with the prosecution of a criminal case are not recoverable on a Fourth Amendment section 1983 claim.

ARGUMENT

The state statute of limitations governing actions for personal injury applies to actions brought under section 1983. See *Wilson v. Garcia*, 471 U.S. 261, 276-80 (1985). In Illinois, the statute of limitations that applies to personal injury claims is two years. See 735 ILCS 5/13-202 (2004). As petitioner concedes, this statute governs his section 1983 claim. See Pet. Br. 12 n.7. Since petitioner did not file suit within two years of his arrest and detention by respondents, his action is timely only if it accrued within two years of the time he did file suit. To that end, petitioner seizes on the date the charges against him were *nolle prossed* as the date of accrual. That date has no significance for purposes of the accrual of petitioner's Fourth Amendment claim.

It has long been settled that a claim accrues for purposes of the applicable statute of limitations when the claimant suffers a legally cognizable injury. On that test, petitioner's Fourth Amendment claim alleging an arrest without probable cause accrued at the time of the arrest—at that time, petitioner had suffered a legal wrong for which damages are available regardless of whether he was subsequently prosecuted as a consequence of that arrest. Under that straightforward rule, petitioner's Fourth Amendment claim is untimely. Petitioner failed to bring suit for more than nine years after his arrest, well beyond the applicable limitations period.[2]

I. FOURTH AMENDMENT FALSE ARREST CLAIMS ACCRUE AT THE TIME OF ARREST BECAUSE A CLAIMANT CAN RECOVER DAMAGES FOR AN ALLEGEDLY UNCONSTITUTIONAL ARREST REGARDLESS OF THE OUTCOME OF AN ENSUING PROSECUTION.

Under the rules governing accrual, petitioner's Fourth Amendment false arrest claim accrued at the time of his arrest. The rule set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994)—that a section 1983 claim does not accrue when that claim, if sustained, "would render a conviction or sentence invalid" (*id.* at 486)—does not apply in this case because an allegation of an unreasonable search or seizure in violation of the Fourth Amendment is not a claim that necessarily implies the invalidity of a conviction on charges stemming from the search or seizure.

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[2] Although petitioner repeatedly makes reference to alleged coercion of his confession, the state court resolved that issue against petitioner after an evidentiary hearing, as we explain above. In any event, even petitioner acknowledges that "[t]he voluntariness of the confession is not before the Court." Pet. Br. 11 n.5. The Court granted certiorari to consider only the timeliness of a claim for false arrest or other allegedly unreasonable search and seizure. Petitioner's similar references to the alleged falsity of his confession are equally irrelevant to the question on w ch certiorari was granted.

A. Petitioner's False Arrest Claim Accrued At The Time Of His Arrest, Regardless Of The Fact That He Was Prosecuted And Convicted Based On The Fruits Of That Arrest.

It has long been settled that a limitations period ordinarily begins to run when "the plaintiff has a 'complete and present cause of action.'" *Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of California, Inc.*, 522 U.S. 192, 195 (1997) (quoting *Rawlings v. Ray*, 312 U.S. 96, 98 (1941)). Accord, *e.g.*, *United States v. Lindsay*, 346 U.S. 568, 569 (1954); *Clark v. Iowa City*, 87 U.S. (20 Wall.) 583, 589 (1875). Moreover, "[t]he question as to the time when there was a complete and present cause of action . . . is a federal question . . . ." *Rawlings*, 312 U.S. at 98. And it follows that accrual in section 1983 litigation in particular is necessarily governed by federal law because "[s]ection 1983 provides a remedy only for the deprivation of 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Gonzaga University v. Doe*, 536 U.S. 273, 283 (2002). Accordingly, in this case involving a section 1983 claim asserting the Fourth Amendment right to be free from "unreasonable searches and seizures" (U.S. Const. amend. IV), it is necessary to look to federal law to determine when, under the Fourth Amendment, petitioner had a complete and present federal right to seek redress for an allegedly unreasonable search and seizure.[3]

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[3] The courts of appeals are in agreement that the question when a section 1983 claim accrues for purposes of computing the limitations period is governed by federal law. See, *e.g.*, *Gibson v. Superintendent of New Jersey Department of Law*, 411 F.3d 427, 435 (3d Cir. 2005), cert. denied, 126 S. Ct. 1571 (2006); *Behavioral Institute of Indiana, LLC v. Hobart City of Common Council*, 406 F.3d 926, 929 (7th Cir. 2005); *Lovett v. Ray*, 327 F.3d 1181, 1182 (11th Cir. 2003) (per curiam); *Sharpe v. Cureton*, 319 F.3d 259, 266 (6th Cir.), cert. denied, 540 U.S. 876 (2003); *Nieves v. McSweeney*, 241 F.3d 46, 52 (1st Cir. 2001); *Beck v. City of Muskogee Police Department*, 195 F.3d 553, 557 (10th Cir. 1999);

The Fourth Amendment forbids detention at a police facility in the absence of probable cause. See, *e.g.*, *Hayes v. Florida*, 470 U.S. 811, 815-16 (1985); *Dunaway v. New York*, 442 U.S. 200, 213-16 (1979). And, as this Court has explained, "[t]he wrong condemned by the Fourth Amendment is 'fully accomplished' by the unlawful search or seizure itself." *United States v. Leon*, 468 U.S. 897, 906 (1984) (quoting *United States v. Calandra*, 414 U.S. 338, 354 (1974)). Accord, *e.g.*, *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990). Thus, petitioner's allegations that he was arrested and subsequently detained at a police station through the course of an evening without probable cause assert a violation of his right to be free from unreasonable search and seizure protected by the Fourth Amendment; and that violation was complete as soon as the allegedly unreasonable search and seizure occurred. Moreover, while the Fourth Amendment's exclusionary rule sometimes precludes the admission of evidence obtained as a consequence of a Fourth Amendment violation (see, *e.g.*, *Hudson v. Michigan*, 126 S. Ct. 2159, 2163-65 (2006)), the Fourth Amendment also grants the victims of allegedly unreasonable searches or seizures a right to seek damages (see, *e.g.*, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971)).[4] Thus, section 1983 affords a damages

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Covington v. City of New York, 171 F.3d 117, 121 (2d Cir.), cert. denied, 528 U.S. 946 (1999); *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380-81 (9th Cir. 1998) (per curiam); *Brooks v. City of Winston-Salem*, 85 F.3d 178, 181 (4th Cir. 1996); *Moore v. McDonald*, 30 F.3d 616, 620-21 (5th Cir. 1994). Petitioner agrees. See Pet. Br. 12 n.7.

[4] Of course, petitioner remained wrongfully in the detectives' custody for only a short time, but that does not affect whether he had a claim for damages for that constitutionally improper detention. For example, in *Hudson*, the Court observed that victims of a seconds-long violation of the Fourth Amendment's requirement that officers knock and announce their authority when executing a search warrant were entitled to seek damages under section 1983. See 126 S. Ct. at 2167-68. Surely petitioner had no

remedy to all victims of unreasonable search or seizure, even if they are not prosecuted. See, *e.g.*, *Monroe v. Pape*, 365 U.S. 167, 171-87 (1961), overruled in part on other grounds by *Monell v. Department of Social Services*, 436 U.S. 658 (1977). Accordingly, as soon as the allegedly unconstitutional arrest occurred, petitioner had a complete and present right to seek damages under section 1983 for a violation of his Fourth Amendment rights. His Fourth Amendment cause of action therefore accrued at that time.

The fact that petitioner was subsequently prosecuted as a consequence of his arrest did not prevent the accrual of a cognizable Fourth Amendment claim under section 1983. This Court has long made clear that even those who are convicted through the use of evidence obtained during an unconstitutional search or seizure are entitled to sue for the antecedent Fourth Amendment violation. In *Haring v. Prosise*, 462 U.S. 306 (1983), for example, this Court held that a prisoner's section 1983 action to recover for illegal search and seizure was not barred by his plea of guilty to possessing items found in the search, reasoning that the conviction was "simply irrelevant to the legality of the search under the Fourth Amendment or to Prosise's right to compensation from state officials under § 1983." *Id.* at 316. Similarly, in *Hudson*, the Court observed that victims of a violation of the Fourth Amendment's requirement that officers knock and announce their authority when executing a search warrant may seek damages under section 1983 even when they are convicted as a consequence of evidence obtained during the search. See 126 S. Ct. at 2167-68.

To be sure, as this Court held in *Allen v. McCurry*, 449 U.S. 90 (1980), if a claimant litigates a Fourth Amendment claim in the course of defending a state-court criminal prosecution, the findings of the state court are entitled to the

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lesser right to seek damages for his allegedly unconstitutional detention over the course of an evening.

same preclusive effect in a subsequent federal action under section 1983 as they would receive in the state courts, a result that will ordinarily prevent relitigation of Fourth Amendment claims that have been resolved adversely to the claimant in the state criminal case. See *id.* at 103-05. See also 28 U.S.C. § 1738. But the existence of a potential preclusion defense does not mean that the section 1983 claim fails to accrue until the criminal case terminates in a manner favorable to the accused, as petitioner suggests. See Pet. Br. 29. In *Allen* itself, even as it recognized a preclusion defense for issues previously litigated, the Court added that to the extent the state court had found that the claimant was the victim of an unlawful search and seizure, he could seek "damages for the part of the seizure declared illegal by the state court." 449 U.S. at 93 n.2. This was so even though the prisoner had been convicted based upon lawfully obtained evidence. See *id.* at 92. More important, while preclusion may be a defense on some section 1983 claims that have already been litigated in state court, the existence of a potential preclusion defense has never prevented a claim from accruing for purposes of the applicable statute of limitations. If the rule were otherwise, claims facing preclusion defenses would simply never accrue.

Nor does it matter for accrual that a claimant faces criminal charges accompanied by pretrial detention—and if things go badly at trial, post-conviction incarceration. If the victim of an allegedly unconstitutional arrest is prosecuted as a consequence of that arrest, that may well be a continuing adverse consequence of the antecedent violation, at least until the prosecution is resolved in his favor. But even if the damages caused by a state-court prosecution and conviction are recoverable on a Fourth Amendment claim—a question we address in Part II below—the fact that a claimant continues to experience adverse consequences flowing from an unlawful act does not delay the running of the statute of limitations. To the contrary, "[t]he proper focus is on the time of the [illegal] act, not the point at which the *consequences* of the

act become painful." *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (per curiam) (emphasis in original). For just that reason, in *Chardon*, this Court held that a claim under section 1983 seeking damages for an allegedly unconstitutional termination of public employees accrued when the plaintiffs were notified of the impending termination, and not when they subsequently were discharged. See *id.* at 8. See also *Delaware State College v. Ricks*, 449 U.S. 250, 258 (1980).

Petitioner asserts that his claim is "for the 'injury' of being convicted and imprisoned" (Pet. Br. 13-14) (quoting *Heck*, 512 U.S. at 487 n.7), and not simply for an allegedly wrongful arrest. The Fourth Amendment, however, does not address wrongful prosecutions or convictions; its concern is with "unreasonable searches and seizures." U.S. Const. amend. IV. Indeed, this Court has "emphasized repeatedly that the government's use of evidence obtained in violation of the Fourth Amendment does not itself violate the Constitution." *Pennsylvania Board of Probation & Parole v. Scott*, 524 U.S. 357, 362 (1998). That is because "[t]he Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands." *Leon*, 468 U.S. at 906. For this reason, the "use of fruits of a past unlawful search or seizure 'work[s] no new Fourth Amendment wrong.'" *Ibid.* (quoting *Calandra*, 414 U.S. at 354) (brackets in original). Accord, *e.g.*, *Scott*, 524 U.S. at 362-63; *Arizona v. Evans*, 514 U.S. 1, 11 (1995).

Accordingly, even if petitioner can recover damages stemming from his prosecution and conviction, that would not delay accrual. His prosecution and conviction were, at most, a continuing consequence of the antecedent Fourth Amendment violation. Such continuing consequences do not prevent accrual. The rule could hardly be otherwise, or the claims of those who suffer permanent disability or other types of injuries that continue indefinitely would never accrue. In short, the fact that petitioner's damages stemming from his allegedly unconstitutional arrest may have continued to

mount until the charges against him were dropped and he was released from custody provides no basis to delay accrual of his Fourth Amendment claim.[5]

B. There Was No Continuing Seizure That Delayed The Running Of The Limitations Period.

Petitioner seeks to avoid the settled rules we discuss above with the argument that he was subjected to a "continuing seizure" that lasted until the charges against him were dropped. Pet. Br. 17-23. He relies on Justice Ginsburg's suggestion in *Albright v. Oliver*, 510 U.S. 266 (1994), that a person may be considered "seized" for Fourth Amendment purposes "so long as he is bound to appear in court and answer the state's charges." *Id.* at 279 (concurring opinion).[6]

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[5] In *Heck*, the Court held that the recoverable damages available to a section 1983 plaintiff "do[] *not* encompass the 'injury' of being convicted and imprisoned (until his conviction has been overturned)." 512 U.S. at 487 n.7 (emphasis in original). Assuming—despite our contrary submission in Part II below—that damages associated with an allegedly wrongful prosecution are sometimes recoverable under the Fourth Amendment, this might mean that a section 1983 plaintiff bringing a Fourth Amendment claim while his conviction is outstanding will face a limitation on the recoverable damages, and may later be able to obtain additional damages if his conviction if vacated. Even so, this limitation on damages is no reason to delay accrual. As we explain above, accrual of the cause of action does not wait for all of the plaintiff's damages to accrue. Rather, the cause of action accrues when there has been a violation of the plaintiff's legally cognizable rights, even if all the damages are not known at the time.

[6] As both the plurality (see 510 U.S. at 271) and Justice Ginsburg (see *id.* at 277 & n.1) recognized, in *Albright*, the petitioner pressed no Fourth Amendment claim in support of his claim that he was entitled to seek relief under section 1983 for an allegedly wrongful prosecution. Accordingly, the Court had no occasion to decide whether Albright had a Fourth Amendment claim that was not barred by the applicable statute of limitations, and the Court lacked the benefit of briefing and argument on any Fourth Amendment issue, including the "continuing seizure" theory that Justice Ginsburg discussed. Even so, although Albright had filed suit

The concept of a continuing seizure that tolls the running of the statute of limitations on a Fourth Amendment claim is unavailing here for at least two reasons.[7]

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within two years of the termination of his prosecution, that was more than two years after he had been arrested; and as a result the plurality added that he "may have missed the [applicable two-year] statute of limitations for any claim he had based on an unconstitutional arrest or seizure." *Id.* at 271 n.5. Thus, *Albright* can hardly be regarded as firm support for petitioner, despite his claim to the contrary. See Pet. Br. 18.

[7] Petitioner claims that the Seventh Circuit "stands alone" in rejecting the "continuing seizure" theory. Pet. Br. 21. In fact, at least three other Circuits also have rejected the theory. See, *e.g.*, *Castellano v. Fragozo*, 352 F.3d 939, 959 (5th Cir. 2003) (en banc), cert. denied, 543 U.S. 808 (2004); *Nieves*, 241 F.3d at 55-56; *Riley v. Dorton*, 115 F.3d 1159, 1162-64 (4th Cir.) (en banc), cert. denied, 522 U.S. 1030 (1997). And the Eleventh Circuit has expressed its "doubts about the viability of this theory." *Kingsland v. City of Miami*, 382 F.3d 1220, 1236 (11th Cir. 2004). Accord *Whiting v. Traylor*, 85 F.3d 581, 584 (11th Cir. 1996). Moreover, the cases petitioner cites offer him little support. As we note above, *Riley* rejects the concept of continuing seizure, and *Whiting* calls it into question. *Lambert v. Williams*, 223 F.3d 257 (4th Cir. 2000), does not even discuss the idea and certainly does not overrule the Fourth Circuit's earlier decision in *Riley*. *Fontana v. Haskin*, 262 F.3d 871 (9th Cir. 2001), and *Lauro v. Charles*, 219 F.3d 202 (2d Cir. 2000), involve challenges to pretrial detention only, and stand for the proposition that an otherwise lawful arrest may give rise to a Fourth Amendment violation if the police improperly exacerbate the seizure prior to the initial court appearance. See *Fontana*, 262 F.3d at 878-81 (claim that arresting officer sexually harassed arrestee while transporting her to the police station falls within Fourth Amendment because "once a seizure has occurred, it continues throughout the time the arrestee is in the custody of the arresting officers") (citation omitted); *Lauro*, 219 F.3d at 209-13 (although arrestee was lawfully arrested, arrestee's Fourth Amendment rights subsequently were violated by staged "perp walk" before media two hours after arrest). Neither *Fontana* nor *Lauro* suggests that the statute of limitations on a claim against arresting officers does not run once the arrestee is no longer in police custody. Finally, although *Gregory v. City of Louisville*, 444 F.3d 725 (6th Cir. 2006), and *Gallo v. City of Philadelphia*, 161 F.3d 217 (3d Cir. 1998), accept the continuing seizure theory, both concern malicious prosecution claims. See *Gregory*, 444 F.3d at 747-51; *Gallo*,

First, it is inaccurate to characterize an illegal arrest as giving rise to a "continuing seizure" on the part of the arresting officer that lasts until the prosecution ends and the arrestee is released from custody. Instead, once the arrestee is no longer in the arresting officer's custody, the officer's seizure of the arrestee is at an end. For example, under Illinois law, once an arrestee is brought to court for arraignment, the judge must then admit the arrestee to bail as provided by applicable state law. See 725 ILCS 5/109-1 (2004). Accordingly, once petitioner had received a bail hearing, he was no longer in the detectives' custody, nor was he in the custody of the City of Chicago. Instead, his custodial status was determined by the court. It makes no sense to say that Detectives Kato and Roy were guilty of any kind of "continuing seizure" that lasted throughout petitioner's prosecution. To the extent that the allegedly false arrest caused petitioner to be incarcerated subsequent to his bail hearing, that fact is relevant, as we explain above, at most to the damages petitioner experienced as a consequence of the arrest, but whether damages continued to mount until the charges against petitioner were dropped does not delay the running of the statute of limitations.

Second, even if the detectives had in fact committed some sort of "continuing seizure" that persisted throughout petitioner's prosecution and post-conviction custody, such a "continuing" seizure would not delay accrual of petitioner's Fourth Amendment claim. A "continuing" violation delays accrual only in cases in which there is continuing misconduct by the defendant or when the plaintiff suffers an injury that is not actionable at the outset of the defendant's wrongful acts. For example, in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), the Court acknowledged the general rule that a claim accrues on the date of a defendant's

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161 F.3d at 221-22. As we explain below, petitioner has not pressed a malicious prosecution claim.

wrongful act. See *id.* at 112-13. The Court, added, however, that an alleged hostile work environment was a continuing wrong that delayed the running of the limitations period because "[a] hostile work environment claim is composed of a series of separate acts that collectively constitute one unlawful employment practice." *Id.* at 117 (citation and internal quotations omitted). Accord *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 381 (1982) (claimed violation of the Fair Housing Act was considered a continuing violation because it was "based not solely on isolated incidents . . . but a continuing violation manifested in a number of incidents"). Here, however, there was no continuing pattern of unreasonable search or seizure; the detectives arrested petitioner only once, and he was never in their custody after the bail hearing. Thus, the detectives' alleged Fourth Amendment violation was complete once petitioner left their custody. To the extent that the detectives were involved in the ensuing prosecution—as witnesses—that worked no independent or continuing Fourth Amendment wrong because, as we explain above, the Fourth Amendment is addressed to unreasonable search and seizure, not unwarranted prosecutions.

The decision in *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321 (1971), upon which petitioner also relies (see Pet. Br. 29-31), is inapposite for similar reasons. In that case, the Court acknowledged that private antitrust actions are usually subject to the rule that "a cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business" (401 U.S. at 338), but recognized an exception for cases of a "continuing conspiracy" to violate the federal antitrust laws when the damages are so "speculative" or "unprovable" at the time of a defendant's unlawful act that the plaintiff could not have practicably sought relief at that time (*id.* at 339). As the Court later explained, the exception articulated in *Hazeltine* is inapplicable to cases where the injuries suffered by the plaintiff are "specific and calculable" at the time of the defendant's

wrongdoing. *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190-91 (1997). And here, as we explain above, there was a specific and calculable injury based on petitioner's allegedly unconstitutional detention at the police station, regardless of whether petitioner was subsequently prosecuted.

C. The Delayed Accrual Rule Of *Heck v. Humphrey* Does Not Apply To This Case.

Petitioner relies heavily on *Heck* to overcome his having filed suit nine years after his arrest. Under his reading of *Heck*, his unlawful arrest claim did not accrue until the charges against him were dismissed. See Pet. Br. 13-17. But as the court of appeals correctly held, the delayed accrual rule set forth in *Heck* is inapplicable to this case.

In *Heck*, a prisoner brought a section 1983 action alleging that prosecutors and an investigator "had engaged in an 'unlawful, unreasonable, and arbitrary investigation' leading to petitioner's arrest; 'knowingly destroyed' evidence 'which was exculpatory in nature and could have proved [petitioner's] innocence'"; and caused "'an illegal and unlawful voice identification procedure' to be used at petitioner's trial." 512 U.S. at 479 (brackets in original). Relying on "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments" (*id.* at 486), the Court held that "when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would *necessarily* imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated" (*id.* at 487) (emphasis added). Conversely, "if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed . . . ." *Ibid.* (emphasis in original). Applying this rule, the Court concluded that

Heck's section 1983 claim had never accrued because Heck had not denied that his claim challenged the legality of his still-outstanding conviction. See *id.* at 478 n.2, 489-90.[8]

In dicta, the Court in *Heck* addressed the effect of the rule it had crafted on Fourth Amendment claims:

> a suit for damages attributable to an allegedly unreasonable search may lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting in the § 1983 plaintiff's still-outstanding conviction. Because of doctrines like independent source and inevitable discovery, and especially harmless error, such a § 1983 action, even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful.

512 U.S. at 487 n.7 (citations omitted and emphasis in original). As the Seventh Circuit has previously explained, this footnote is "a bit unclear." *Copus v. City of Edgerton*, 151 F.3d 646, 648 (7th Cir. 1998). "[I]t could mean that some Fourth Amendment claims brought under § 1983 would not necessarily be barred if the record revealed the tainted evidence used against the plaintiff at the criminal trial would have been admitted anyway." *Ibid.* But "[o]n the other hand, the footnote might mean that Fourth Amendment claims for unlawful searches or arrests do not necessarily imply a conviction is invalid, so in all cases these claims can go forward." *Ibid.*[9] Petitioner advocates the former reading and

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[8] *Edwards v. Balisok*, 520 U.S. 641 (1997), provides another example of the application of *Heck*. There, the Court held that a prisoner's action attacking the procedures used to revoke good-time credits would not accrue until the decision against him in the disciplinary proceeding was invalidated. See *id.* at 647-48. This was because the prisoner had alleged wrongful exclusion of all the evidence he had adduced in his defense and bias on the part of the hearing officer, both of which, if proved, would require setting aside the decision. See *id.* at 647.

[9] This ambiguity presumably explains the conflict in the Circuits on the question presented. See Pet. App. 14-15. Of course, given that conflict,

petitioner is simply wrong in positing that the Seventh Circuit "stands alone" in its adoption of a rule that Fourth Amendment claims accrue at the time of an allegedly unconstitutional search or seizure. Pet. Br. 14. While the Third Circuit has recently changed course and adopted the fact-specific approach petitioner advocates, see *Gibson*, 411 F.3d at 449, the four other Circuits identified by the court of appeals as having taken a position consistent with its own holding have not altered their approach. For example, the Tenth and Eleventh Circuits expressly have held that accrual is delayed only in the small category of cases in which success on a Fourth Amendment claim will negate an element of the offense charged. See *Beck*, 195 F.3d at 558-59; *Hughes v. Lott*, 350 F.3d 1157, 1160-61 & n.2 (11th Cir. 2003). This limited exception was articulated in *Heck*, see 512 U.S. at 486 n.6, and we rely on this exception below to support our reading of that case. As for the cases cited by petitioner in the First, Eighth, Tenth, and Eleventh Circuits, in *Nieves*, the First Circuit merely acknowledged "that there may be rare and exotic circumstances in which a section 1983 claim based on a warrantless arrest will not accrue at the time of arrest" (241 F.3d at 52 n.4), but this no doubt refers to the same limited exception that other courts recognize, based on *Heck*'s footnote six, which we discuss below, and which the Seventh Circuit's holding accommodates. And while petitioner is correct that the Eighth Circuit in *Anderson v. Franklin*, 192 F.3d 1125 (8th Cir. 1999), dismissed a false arrest claim because the plaintiff had "made no showing that his conviction or sentence has been rendered invalid" (*id.* at 1131), the court did not undertake the fact-specific analysis required by petitioner's approach. Further, the court failed to address *Simmons v. O'Brien*, 77 F.3d 1093 (8th Cir. 1996), in which that Circuit had previously adopted the same rule embraced by the Seventh Circuit below. See *id.* at 1095. Most tellingly, since *Anderson*, the Eighth Circuit at least twice has reaffirmed this rule. See *Whitmore v. Harrington*, 204 F.3d 784, 784-85 (8th Cir. 2000) (per curiam); *Moore v. Sims*, 200 F.3d 1170, 1171-72 (8th Cir. 2000). *Anderson* thus does not reflect the law of the Eighth Circuit. As for the Tenth Circuit, although that court stated in a footnote in *Laurino v. Tate*, 220 F.3d 1213 (10th Cir. 2000), that the accrual rule established in *Beck* delays accrual in cases where "all the evidence to be presented was obtained as the result of an illegal arrest" (*id.* at 1217 n.3), *Beck* holds no such thing. Rather, *Beck* expressly reserves judgment on that issue. See 195 F.3d at 559 n.4 (noting its disagreement with the holding of *Covington*, 171 F.3d at 123, that accrual is delayed in cases where "the only evidence for conviction was obtained pursuant to an [unlawful] arrest," and recognizing, in any event, that it was not faced

contends that *Heck* delays accrual of his Fourth Amendment claim until the charges against him were dropped because "[a]ll of the evidence available to the prosecution at petitioner's trial was the fruit of his arrest." Pet. Br. 14.[10] The dissenting judge below similarly urged delayed accrual whenever a Fourth Amendment claim, if successful, would require suppression of either all of the evidence, or evidence sufficiently crucial that its admissibility would be required to sustain the criminal case against the claimant. Pet. App. 21-23. This reading of *Heck* is ultimately untenable.

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with such a case). And, as we explain in Part I.C.3 below, an exception for "only evidence" cases is not only contrary to *Heck* but unworkable. Finally, in *Hughes*, the Eleventh Circuit reaffirmed its view, articulated in *Datz v. Kilgore*, 51 F.3d 252 (11th Cir. 1995), that Fourth Amendment claims categorically accrue at the time of the unlawful search or seizure—but for the limited exception, as we explain above, for claims that challenge an element of the offense charged. See *Hughes*, 350 F.3d at 1160-61. *Uboh v. Reno*, 141 F.3d 1000 (11th Cir. 1998), upon which petitioner relies, is not to the contrary, for it concerns a section 1983 action alleging malicious prosecution and not false arrest. See *id.* at 1003-07. As we explain in Part II.A.2, petitioner has not pressed a malicious prosecution claim.

[10] Petitioner's "only evidence" rule hardly describes his own case. Although petitioner claims that his confession was the only evidence implicating him in Handy's murder, at least two witnesses placed petitioner at the crime scene, including one who told the police that he saw petitioner running from the scene after hearing shots. Pet. App. 3, 31, 38; J.A. 9-10, 26. To be sure, at trial, the prosecution relied heavily on petitioner's confession (no doubt largely because at that point he had made no argument that it was false), and, moreover, the prosecution opted not to retry petitioner immediately once the confession was deemed inadmissible. Nevertheless, had it been necessary, this other evidence could have been offered in addition to the confession at the criminal trial.

1. *Heck* does not delay accrual of Fourth Amendment claims because these claims do not require favorable termination of an antecedent criminal action.

As *Heck*'s Fourth Amendment footnote stressed, the Court's holding prevents accrual only of claims that *necessarily* imply the invalidity of a conviction—or, in cases in which the claimant is yet to be tried on a criminal charge, of Fourth Amendment claims that necessarily imply the invalidity of a potential conviction on the pending charge.[11] This phrase—"necessarily imply the invalidity of [the] conviction"—is a strange way of saying that a claim does not accrue when an examination of the record discloses that the evidence derived from an alleged Fourth Amendment violation should have been suppressed and is necessary to secure a judgment of conviction. Yet the requirement that the section 1983 claim be inherently inconsistent with a valid conviction was central to the holding in *Heck*, as the Court subsequently explained in *Nelson v. Campbell*, 541 U.S. 637 (2004). Ruling that a lawsuit challenging the method for administering a lethal injection was not barred by *Heck*'s holding that some section 1983 actions cannot be brought until the underlying judgment against the accused has been vacated, the Court explained:

> we were careful in *Heck* to stress the importance of the term "necessarily." For instance, we acknowledged that an inmate could bring a challenge to the lawfulness of a

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[11] Of the Circuits that have considered the issue, most have applied *Heck*'s delayed accrual rule to cases involving pending criminal charges as well as cases involving extant convictions. See *Covington*, 171 F.3d at 124; *Smith v. Holtz*, 87 F.3d 108, 112-13 (3d Cir.), cert. denied, 519 U.S. 1041 (1996); *Shamaeizadeh v. Cunigan*, 182 F.3d 391, 397-98 (6th Cir.), cert. denied, 528 U.S. 1021 (1999); *Washington v. Summerville*, 127 F.3d 552, 555-56 (7th Cir. 1997), cert. denied, 523 U.S. 1073 (1998); *Harvey v. Waldron*, 210 F.3d 1008, 1014 (9th Cir. 2000); *Beck*, 195 F.3d at 557; *Uboh*, 141 F.3d at 1006-07.

> search pursuant to § 1983 in the first instance, even if the search revealed evidence used to convict the inmate at trial, because success on the merits would not "*necessarily* imply that the plaintiff's conviction was unlawful." . . . To hold otherwise would have cut off potentially valid damages actions as to which a plaintiff might never obtain favorable termination—suits that could otherwise have gone forward had the plaintiff not been convicted.

Id. at 647 (emphasis in original). This point was made in *Heck* itself; the Court explained that Heck's lawsuit was barred because it was akin to a common-law action for malicious prosecution, and "[o]ne element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." 512 U.S. at 484.

Thus, *Heck* delays accrual only of claims that require a favorable termination of an antecedent prosecution and does not delay accrual of claims that may be brought even if the claimant is convicted. As we explain in Part I.A above, Fourth Amendment claims do not require favorable termination of an antecedent prosecution and may be brought even when the claimant is convicted on the strength of evidence obtained as a consequence of an alleged Fourth Amendment violation. That is because the Fourth Amendment addresses unreasonable search and seizure, not wrongful prosecutions, and Fourth Amendment claims therefore accrue immediately upon an allegedly unreasonable search or seizure. Indeed, it is quite settled that an allegedly unconstitutional arrest is not necessarily inconsistent with a valid conviction on charges arising from that arrest. As this Court explained in *Gerstein v. Pugh*, 420 U.S. 103 (1975), "the established rule [is] that illegal arrest or detention does not void a subsequent conviction." *Id.* at 119. The Court reiterated in *United States v. Crews*, 445 U.S. 463 (1980), that "[a]n illegal arrest, without more, has never been viewed . . . as a defense to a valid

conviction." *Id.* at 474. The only exception to this rule—identified in *Heck* itself—is in a case in which success on the section 1983 Fourth Amendment action would require the claimant "to negate an element of the offense of which he has been convicted," such as a conviction for "the crime of resisting arrest, defined as intentionally preventing a peace officer from effecting a *lawful* arrest." 512 U.S. at 486 n.6 (emphasis in original). In this case, petitioner does not claim that the validity of his arrest was an element of any crime for which he was charged or convicted.

In contrast to our reading of *Heck*, the position of petitioner and the dissenting judge below turns on the factual incompatibility between the Fourth Amendment claim and the existence of sufficient untainted evidence to support a conviction. This is little more than a reformulation of the rule that the Court rejected in *Heck* that would have barred suit "whenever 'judgment in a § 1983 action would resolve a necessary element to a likely challenge to a conviction . . . .'" 512 U.S. at 488 (quoting Brief for Respondents 26, n. 10). As the Court explained, concerns about factual inconsistency between prior criminal litigation and a current section 1983 claim are appropriately addressed by doctrines of preclusion, not the law of accrual; and concerns about unwarranted parallel state and federal litigation are appropriately addressed by doctrines of abstention, not rules governing accrual. See *id.* at 487-88 & nn. 8-9. We address the doctrines of preclusion and abstention at greater length in Part I.D below, but for present purposes we note only, as *Heck* itself explains, that concerns about potential overlap between state criminal prosecutions and federal section 1983 litigation supply no reason to manipulate the law of accrual.

2. *Heck* does not delay accrual of Fourth Amendment claims because they are not cognizable in habeas corpus.

There is yet another reason why *Heck*'s rule of delayed accrual is inapplicable to Fourth Amendment claims. *Heck*'s

holding applies only to constitutional claims that must be brought through the vehicle of a habeas corpus action; and allegations that the fruits of an unreasonable search or seizure were improperly used in a subsequent criminal prosecution are not cognizable in habeas corpus.

In *Heck*, the Court explained that it needed to fashion a rule to ensure that section 1983 did not improperly intrude upon the domain of the habeas corpus statute, which requires that those in state custody exhaust their state-court remedies before presenting to a federal court a claim that they are being held in custody in violation of the Constitution or laws of the United States. See 512 U.S. at 480-82. See also 28 U.S.C. § 2254. Thus, *Heck*'s delayed accrual rule properly bars claims that are cognizable only in habeas corpus. Indeed, in his separate opinion, Justice Souter made just this point; he read the Court's opinion "as saying nothing more than that now, after enactment of the habeas statute and because of it, prison inmates seeking § 1983 damages in federal court for unconstitutional conviction or confinement must satisfy a requirement analogous to the malicious-prosecution tort's favorable-termination requirement." 512 U.S. at 500 (opinion concurring in the judgment).

Subsequently, in *Spencer v. Kemna*, 523 U.S. 1 (1998), in which the Court held that a prisoner's release from custody upon the expiration of his sentence rendered his habeas corpus action moot (see *id.* at 14-17), five Members of the Court embraced this understanding of *Heck*, explaining that a section 1983 action can be brought whenever the claimant is unable to bring the same claim under the habeas statute. See *id.* at 21 (Souter, J., joined by O'Connor, Ginsburg & Breyer, JJ., concurring) ("[A] former prisoner, no longer 'in custody,' may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy."); *id.* at 21 (Ginsburg, J., concurring) ("Individuals without recourse to

the habeas statute because they are not 'in custody' . . . fit within § 1983's 'broad reach.'"); *id.* at 25 n.8 (Stevens, J., dissenting) ("Given the Court's holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear, as Justice Souter explains, that he may bring an action under 42 U.S.C. § 1983."). See also *Muhammad v. Close*, 540 U.S. 749, 755 (2004) (per curiam) (prisoner's section 1983 action "raised no claim on which habeas relief could have been granted on any recognized theory, with the consequence that *Heck*'s favorable termi-nation requirement was inapplicable").[12]

Accordingly, *Heck* did not bar petitioner's section 1983 Fourth Amendment action until the charges against him were dropped because petitioner never had a habeas remedy available on that claim. This Court has held that a prisoner may not seek habeas relief on the ground that he was prosecuted on the basis of evidence obtained in violation of the Fourth Amendment "where the State has provided an opportunity for full and fair litigation" of that claim. *Stone v. Powell*, 428 U.S. 465, 481-82 (1976). Illinois, of course, offered petitioner such an opportunity to present his Fourth Amendment claim; indeed, he prevailed on that argument in the state-court criminal proceedings. *Heck*'s favorable termination requirement therefore has no application here.

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[12] Cf., *e.g.*, *Nonnette v. Small*, 316 F.3d 872, 875-77 (9th Cir. 2002) (*Heck* does not apply to a section 1983 claim challenging revocation of good-time credits—success on which would imply the invalidity of the plaintiff's conviction—where plaintiff had been released from incarceration and habeas was therefore unavailable), cert. denied, 540 U.S. 1218 (2004); *Huang v. Johnson*, 251 F.3d 65, 73-75 (2d Cir. 2001) (a section 1983 action challenging denial of credit for time served in pretrial incarceration was not barred by *Heck* where the incarceration had been fully served and habeas was unavailable); *Shamaeizadeh*, 182 F.3d at 396 n.3 (noting that *Spencer* casts doubt on whether *Heck* applies to prisoners no longer incarcerated for whom habeas relief is not available); *Carr v. O'Leary*, 167 F.3d 1124, 1127 (7th Cir. 1999) (same).

3. Petitioner's reading of *Heck* gives rise to anomalous results.

The ground on which the court of appeals rested its holding was that petitioner's reading of *Heck* provides claimants with no practicable way to determine when their Fourth Amendment claims accrue. See Pet. App. 12-13. These concerns are amply warranted.

As this Court has explained, "[f]ew areas of law stand in greater need of firmly defined, easily applied rules than does the subject of periods of limitations." *Wilson*, 471 U.S. at 266 (citation and internal quotations omitted). This is because uncertainty about rules governing the running of statutes of limitations

> is costly to all parties. Plaintiffs may be denied their just remedy if they delay in filing their claims, having wrongly postulated that the courts would apply a longer statute. Defendants cannot calculate their contingent liabilities, not knowing with confidence when their delicts lie in repose.

Id. at 275 n.34. Accord, *e.g.*, *Rotella v. Wood*, 528 U.S. 549, 555 (2000) ("repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities" are "the basic policies of all limitations provisions"). For section 1983 claims in particular, the Court has explained that an approach to the applicable statute of limitations that turns on "the particular facts of each claim . . . inevitably breeds uncertainty and time-consuming litigation that is foreign to the central purposes of § 1983." *Wilson*, 471 U.S. at 272.

Under either the rule advocated by petitioner—that accrual is delayed when all the evidence adduced at the criminal trial is the fruit of an alleged Fourth Amendment violation—or the rule advanced by the dissenting judge below—that accrual is delayed when evidence critical to the conviction is the fruit of an alleged violation—a plaintiff will never be able to know

with confidence when his claim has accrued. For one thing, not all plaintiffs are criminally charged at the time of an allegedly unreasonable search or seizure. The victims of an alleged false arrest, for example, may be released without charge, although charges could still be brought at any point within the applicable statute of limitations.[13] Even after charges are brought, the claimant will not know whether evidence obtained as a consequence of an alleged Fourth Amendment violation will be the only evidence offered against him, or, at a minimum, will be critical to the prosecution's case. Until the criminal case goes to trial, the claimant cannot predict with confidence what types of evidence will be adduced by the prosecution at trial. And even after trial, the claimant will frequently be unsure whether his conviction can stand without support from the evidence obtained through an alleged Fourth Amendment violation. It may take years of appellate litigation before this sorts itself out.

These problems are demonstrated by petitioner's own case. As the district court recognized, the Illinois Appellate Court's initial directive to the state trial court to "reinstate [petitioner's] conviction" if his confession was sufficiently attenuated from his unlawful arrest to be admissible (J.A. 22), "acknowledged the possibility that, even if Petitioner was illegally arrested, his conviction could still stand" (Pet. App. 51). As a result, even after the state appellate court's first ruling, petitioner did not know whether success on his Fourth Amendment claim meant that his conviction could not stand.

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[13] In Illinois, for example, for most felony offenses the applicable statute of limitations is three years, although there is no limitations period for first-degree murder. See 720 ILCS 5/3-5 (2004). Accordingly, a potential section 1983 plaintiff not charged immediately after an allegedly unreasonable search or seizure cannot know for quite some time whether charges will eventually be brought—and, as here, in cases involving first-degree murder, the claimant may remain unsure for many years if not decades.

If the state courts had ultimately ruled that petitioner's confession was sufficiently voluntary to dissipate the taint of the antecedent Fourth Amendment violation, petitioner's conviction would have been able to stand. See *Brown v. Illinois*, 422 U.S. 590, 601-04 (1975). See also *Hudson*, 126 S. Ct. at 2164-65. Accordingly, under petitioner's own accrual rule, by waiting for the criminal litigation to conclude, he would have been too late to bring his Fourth Amendment claim if the result of the attenuation hearing in state court had been different. Petitioner's rule is a trap for the unwary.

Accordingly, the court of appeals was quite right to observe that "*ex ante* it is not readily apparent which criminal cases might proceed despite the consequences of the successful Fourth Amendment challenge." Pet. App. 12. This difficulty, the court concluded, "argues against a rule that requires judges several years after the event to decide whether a particular Fourth Amendment challenge would have been the death knell of the prosecution." *Ibid.* Indeed, petitioner's reading of *Heck* places potential section 1983 plaintiffs in a position where they can safely preserve their rights only by assuming that the statute of limitations will begin to run immediately—the very outcome that the court of appeals adopted. Thus, petitioner's proposed rule does not even achieve his stated objective of permitting claimants to wait for a favorable termination of their criminal cases before they need file a civil action under section 1983. Moreover, other than the holding below, the only way to spare potential plaintiffs the uncertainty that inheres in petitioner's rule would be to announce that all Fourth Amendment claims enjoy delayed accrual. Even petitioner has never advocated such a rule—presumably because it was expressly rejected by *Heck* itself. See 512 U.S. at 486-87 & nn. 6-7.[14] Beyond

[14] Of course, a rule of delayed accrual of all Fourth Amendment claims until the antecedent criminal case ends is also inconsistent with the settled

that, such a rule—as well as the slightly more modest proposals embraced by petitioner and the dissenting judge below involving delayed accrual for a goodly share of Fourth Amendment claims—creates equally serious problems.

The elimination of stale claims is primary among the interests that underlie statutes of limitations. See, *e.g.*, *Rotella*, 528 U.S. at 555; *Board of Regents v. Tomanio*, 446 U.S. 478, 487 (1980); *Railroad Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-49 (1944). As this Court has explained, "[l]imitations periods are intended to put defendants on notice of adverse claims and to prevent plaintiffs from sleeping on their rights." *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 352 (1983). In particular, "'the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.'" *Ricks*, 449 U.S. at 259-60 (quoting *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 463-64 (1975)). Indeed,

> [a] federal cause of action "brought at any distance of time" would be "utterly repugnant to the genius of our laws." Just determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost. In compelling circumstances, even wrongdoers are entitled to assume that their sins may be forgotten.

Wilson, 471 U.S. at 271 (quoting *Adams v. Woods*, 6 U.S. (2 Cranch) 336, 342 (1805)). Allowing a section 1983 plaintiff to wait until the state courts vacate a conviction resting on

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rule that a Fourth Amendment claim does not turn on what happens in a related criminal case, as we explain in Part I.A, above. This rule presumably underlies *Heck*'s admonition that Fourth Amendment claims can accrue immediately. See 512 U.S. at 487 n.7. A rule of accrual delaying all Fourth Amendment claims would therefore require disavowing the approach taken in *Heck*.

evidence obtained in violation of the Fourth Amendment is wholly at odds with these critical objectives.

As petitioner's own case demonstrates, his proposed rule will postpone section 1983 Fourth Amendment litigation until long after an alleged unreasonable search or seizure has occurred. The delay is nine years here, perhaps more in other cases. Such delay cannot be justified. A person who claims he was arrested without probable cause has all the evidence necessary to litigate the constitutionality of the police conduct as soon as that conduct occurs. Moreover, unless the defendant is given prompt notice of potential liability, he will lack fair notice of the need to preserve records or take other steps to ensure that material evidence remains available for litigation. In short, petitioner's approach to accrual creates the potential for lengthy delays that could be enormously prejudicial. Even more important, petitioner's rule compromises the integrity of the administration of justice; the truth-seeking process itself is prejudiced when cases must be tried on the basis of stale evidence.[15] That is reason enough to reject petitioner's reading of *Heck*.

D. The Clarity Of The Holding Below Is Not Undermined By The Doctrine Of Tolling.

As the court of appeals explained, the rule that Fourth Amendment claims accrue immediately upon an allegedly unreasonable search or seizure is clear and easy to administer. Pet. App. 11-14. The dissenting judge below, however, claimed that the doctrine of tolling would undermine the clarity of the rule and result in delayed accrual in a wide

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[15] On petitioner's view, the defense of laches will be unavailable as well. That doctrine offers a defense only when a plaintiff has unreasonably delayed bringing suit and the delay has prejudiced the defense. See, *e.g.*, *Morgan*, 536 U.S. at 102-04. Because on petitioner's view, a claimant cannot bring suit until the criminal case has reached a termination favorable to him, even lengthy delays that result in material prejudice to the defense cannot be the subject of a laches defense.

variety of cases, citing the decision in *Shamaeizadeh v. Cunigan*, 182 F.3d 391 (6th Cir.), cert. denied, 528 U.S. 1021 (1999). Pet. App. 23-24.[16] Petitioner does not endorse the concern that the battle over accrual will simply become a battle over tolling, nor does he claim any basis for tolling in this case. In fact, the dissenting opinion's concern is unwarranted.

Just as federal courts apply state statutes of limitations to section 1983 actions, they borrow state tolling rules when determining the timeliness of such actions. See, *e.g.*, *Hardin v. Straub*, 490 U.S. 536, 538-39 (1989); *Tomanio*, 466 U.S. at 485. Petitioner agrees with this (see Pet. Br. 12 n.7), but has never identified any basis under Illinois law to delay the running of the limitations period until the charges against him were dropped, thereby waiving such an argument. His reluctance to invoke tolling is understandable; Illinois simply has no tolling doctrine that would excuse his filing the complaint in this case nearly nine years after his arrest. For example, Illinois law does not toll the limitations period while a claimant is in custody. See, *e.g.*, *Schweihs v. Burdick*, 96 F.3d 917, 919 (7th Cir. 1996) (applying Illinois law). Nor is there reason to require tolling on that basis; as this Court has recognized, "many prisoners are willing and able to file § 1983 suits while in custody." *Hardin*, 490 U.S. at 544.[17] Moreover, a section 1983 claim based on an alleged violation of Fourth Amendment rights in the course of an arrest is a

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[16] In *Shamaeizadeh*, the Sixth Circuit actually did not invoke the doctrine of tolling, but instead adopted the accrual rule favored by the dissenting judge below on the ground that to require a criminal defendant to file a section 1983 action at the time of an allegedly unlawful search or seizure would "misdirect the criminal defendant," who should be allowed to "focus on his primary mode of relief—mounting a viable defense to the charges against him—before turning to a civil claim under § 1983." 182 F.3d at 399.

[17] Some States nevertheless allow tolling when the claimant is in custody. See, *e.g.*, *Hardin*, 490 U.S. at 540 n.8.

particularly easy one for those facing criminal charges to assert, since they will presumably be attuned to Fourth Amendment issues as a consequence of the defense of the pending criminal action. Illinois law also rejects tolling on a false arrest claim while criminal charges remain pending, even though the claimant still facing charges has not yet experienced the bulk of the potential damages stemming from the arrest. See, *e.g.*, *Gonzalez v. Entress*, 133 F.3d 551, 554 (7th Cir. 1998) (applying Illinois law). See also *Golla v. General Motors Corp.*, 657 N.E.2d 894 (Ill. 1995).[18] Thus, nothing in Illinois law suggests that tolling is so widespread that it will undermine the benefits of the categorical rule adopted by the court of appeals. And in these respects, Illinois tolling law is hardly atypical. The "virtue" of tolling, as this Court has explained, is precisely that it is "the exception, not the rule." *Rotella*, 528 U.S. at 561.

That is not to say that tolling will never be appropriate in these cases. Tolling is designed for cases in which the claimant, although "pursuing his rights diligently," is unable to sue in time because "some extraordinary circumstance stood in his way." *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). In *Heck*, the Court recognized the possibility that the doctrine of

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[18] Moreover, under Illinois law, even in cases where tolling is otherwise available, "tolling doctrines require that the plaintiff get the litigation under way promptly after the circumstance justifying delay is no longer present." *Gonzalez*, 133 F.3d at 554. Accord, *e.g.*, *Shropshear v. Corporation Counsel*, 275 F.3d 593, 595 (7th Cir. 2001); *Ashafa v. City of Chicago*, 146 F.3d 459, 464 (7th Cir. 1998). This alone should disqualify petitioner, who did not file suit until nearly one year after the criminal charges were dismissed and he was released from custody. Cf., *e.g.*, *Gonzalez*, 133 F.3d at 554 (nine-month delay in filing suit after release from custody is too long). That delay is simply not explained by petitioner's observation that, under Illinois law, the running of the limitations period was tolled until he turned 18 in 1997 (Pet. Br. 12-13 n.7) because he did not file this suit for more than five years after that.

tolling would apply to section 1983 claims not subject to delayed accrual. See 512 U.S. at 489. See also Pet. App. 13 (noting that this issue had been "reserved" in *Heck*). If there is a case in which some exceptional circumstance justifiably prevented a claimant from bringing suit under section 1983 until the antecedent criminal case had ended, the doctrine of tolling will provide the appropriate vehicle for weighing that justification. And, because tolling will fully serve the interests of those who truly could not file timely, without undermining the clarity and certainty of a categorical rule of accrual, there is no reason to manipulate the rules for accrual as petitioner urges, nor any basis to fear that the cases presenting a genuine basis for tolling will swallow the general rule.

Equally important, considering the justification for delay under the rubric of tolling leaves state courts and legislatures free to weigh the costs and benefits of delaying the initiation of section 1983 litigation. This approach is consistent with Congress's decision not to enact a nationwide statute of limitations for section 1983, but instead "to defer to 'the State's judgment on the proper balance between the policies of repose and the substantive policies of enforcement embodied in the state cause of action.'" *Hardin*, 490 U.S. at 538 (quoting *Wilson*, 471 U.S. at 271). Thus, tolling doctrines offer aid to the plaintiff who can demonstrate compelling justifications for delay without distorting the law of accrual or undermining the role of state statutes of limitations in giving defendants prompt notice and opportunity to investigate potential liabilities.

E. The Court Of Appeals' Holding Does Not Create Unnecessary Litigation Or Unwarranted Friction Between The Federal And State Courts.

Petitioner criticizes the holding of the court of appeals that Fourth Amendment claims accrue immediately as "result[ing] in the needless filing of innumerable false arrest claims" that

will "clutter the district court's docket . . . ." Pet. Br. 33. This criticism is unjustified. As we explain above, Fourth Amendment rights ordinarily do not turn on the outcome in a related criminal case, so the filing of a section 1983 action prior to the termination of a related criminal proceeding is not "needless" or "clutter." Equally important, petitioner's own rule will create precisely the same result. As we explain above, the risks to plaintiffs of the fact-specific approach advocated by petitioner and the dissenting judge below will necessitate the filing of prophylactic claims, since potential section 1983 Fourth Amendment plaintiffs cannot know in advance of trial—and sometimes not even after trial—whether a conviction necessarily rests on evidence that cannot be used under the Fourth Amendment's exclusionary rule. Thus, under petitioner's rule, prophylactic section 1983 actions will be filed while related state criminal proceedings are underway, and the federal courts will encounter the same difficulties that the parties themselves will face in figuring out whether these claims cannot proceed because they would, if sustained, require suppression of all or the most important evidence to be used against the plaintiff in the underlying criminal action—which itself may not yet have gone to trial.

In any event, there are far better ways to avoid overlapping or duplicative litigation between the state and federal courts than by manipulating accrual rules. As *Heck* anticipated, its holding will sometimes require a claimant to file a section 1983 action while a related criminal case is pending, and noted, citing *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), that "abstention may be an appropriate response to the parallel state-court proceedings." 512 U.S. at 488 n.8. In turn, *Colorado River* recognized that parallel state and federal litigation is not uncommon, and held that a federal court may appropriately abstain from exercising its jurisdiction under circumstances in which an exercise of federal jurisdiction may interfere with ongoing state proceedings. See 424 U.S. at 813-20. Ac-

cordingly, when there is a real and substantial risk that a section 1983 case will interfere with a state prosecution, either by enabling the state defendant to circumvent limitations on discovery under state law or to move critical fact-finding to federal court, the case for abstention will be powerful. Cf. *Younger v. Harris*, 401 U.S. 37 (1971) (holding that federal courts must abstain in section 1983 actions seeking to enjoin an ongoing prosecution). Indeed, the courts of appeals have almost universally concluded that abstention is appropriate in section 1983 damages actions where adjudication of those claims would interfere with pending state proceedings by resolving identical issues and thereby undermining the state courts' consideration of the issues. See, *e.g.*, *Gilbertson v. Albright*, 381 F.3d 965, 978-79 n.13 (9th Cir. 2004) (collecting cases).[19]

Under abstention principles, a court may not dismiss a section 1983 damages action, but instead should stay it pending the outcome of related state-court proceedings. See *Quackenbush v. Allstate Insurance Co.*, 517 U.S. 706, 719-31 (1996). Upon the conclusion of the state proceedings, the federal court hearing the section 1983 case will then be obligated to afford the same preclusive effect to the findings of the state court as those findings would receive in the courts of that state, as we explain in Part I.A above. Thus, although petitioner claims that the accrual rule adopted by the court of appeals will create opportunities for collateral attacks on criminal convictions and may lead to overlapping state and federal litigation that could produce inconsistent results (see Pet. Br. 32-33), these concerns are vastly overstated, given

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[19] This Court has not determined whether *Younger* abstention applies to section 1983 damages claims. See, *e.g.*, *Deakins v. Monaghan*, 484 U.S. 193, 202 & n.6 (1988). In that case, however, two Members of the Court would have held that *Younger* does apply because the practical effect of damages relief and injunctive relief is virtually identical, and the federal policy of not interfering with a state proceeding is just as strong. See *id.* at 209-10 (White, J., joined by O'Connor, J., concurring).

the doctrines of abstention and preclusion. And as we note above, in *Heck* itself, the Court explained that concerns about potential inconsistencies between the judgments of state and federal courts are properly addressed not by rules of accrual but instead by a variety of other doctrines that reflect principles of comity between the federal and state courts. See 512 U.S. at 488-90 & nn. 8-9. The Court added that these "judge-made" rules may be applied flexibly to "take account of the policy . . . that state courts be given the first opportunity to review constitutional claims bearing upon state prisoners' release from custody." *Id.* at 488-89 n.9 (citation and internal quotations omitted). Accordingly, the doctrines of abstention and preclusion provide the appropriate vehicles for ensuring that section 1983 does not create duplicative litigation or intrude upon the States' administration of their systems of criminal justice, rather than, as petitioner urges, shoehorning these objectives into the law of accrual.

II. PETITIONER'S REQUEST FOR DAMAGES ASSOCIATED WITH HIS PROSECUTION DOES NOT DELAY ACCRUAL OF HIS FALSE ARREST CLAIM BECAUSE SUCH DAMAGES ARE UNAVAILABLE ON A FOURTH AMENDMENT CLAIM.

In addition to his strained reading of *Heck* and his belief in the concept of a "continuing seizure" that delays accrual, petitioner also relies on a variety of common-law rules to support his view of accrual. See Pet. Br. 23. But petitioner's analogies to various common-law rules governing accrual or recoverable damages should be rejected. Moreover, his attempt to delay accrual based on his argument that he is permitted to recover damages associated with a criminal prosecution fails because these damages are not recoverable in a section 1983 Fourth Amendment action.

A. The Common Law Provides No Support For Petitioner's Accrual Rule.

In *Heck*, the Court wrote:

> The common-law cause of action for malicious prosecution provides the closest analogy to claims of the type considered here because, unlike the related cause of action for false arrest or imprisonment, it permits damages for confinement imposed pursuant to legal process. If there is a false arrest claim, damages for that claim cover the time of detention up until issuance of process or arraignment, but not more. But a successful malicious prosecution plaintiff may recover, in addition to general damages, compensation for any arrest or imprisonment, including damages for discomfort or injury to his health, or loss of time and deprivation of the society.

512 U.S. at 484 (internal quotations and citations omitted). The Court then noted that "[o]ne element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." *Ibid.* On this basis, the Court held that because Heck sought to recover damages for an allegedly wrongful prosecution, his claim could not accrue until the underlying criminal proceeding had terminated in his favor. See *id.* at 489-90. Petitioner attempts to fit within this rule by arguing that his Fourth Amendment claim is akin to various common-law claims—false imprisonment, malicious prosecution, or attorney malpractice. His reliance on these common-law doctrines is unavailing.

1. The common-law claim of false arrest and imprisonment provides no support for petitioner's accrual rule.

Petitioner characterizes his claim for damages associated with his criminal prosecution as a claim for false arrest and imprisonment, which, he further asserts, permits recovery of damages associated with confinement pursuant to legal

process, akin to the tort of malicious prosecution considered in *Heck*. See Pet. Br. 23-27. But this view was rejected by *Heck* itself. As petitioner concedes, false arrest and false imprisonment are essentially complementary descriptions of a single tort. See *id.* at 23 ("[A] person who is falsely arrested is at the same time falsely imprisoned.") (quoting *Whirl v. Kern*, 407 F.2d 781, 790 (5th Cir. 1968), cert. denied, 396 U.S. 901 (1969)). In *Heck*, however, the Court rejected petitioner's view of the damages recoverable for this tort: "'If there is a false arrest claim, damages for that claim cover the time of detention up until issuance of process or arraignment, but not more.'" 512 U.S. at 484 (quoting W. Page Keeton, Dan B. Dobbs, Robert E. Keeton, & David G. Owen, Prosser and Keeton on the Law of Torts 888 (5th ed. 1984)).

Accordingly, petitioner is forced to attack *Heck*—the very decision on which he otherwise heavily relies—by questioning the reliability of the treatise that the Court cited on this point (see Pet. Br. 26), but the view stated therein is hardly idiosyncratic. See, *e.g.*, 35 C.J.S., *False Imprisonment* §§ 3, 64 (1960) (after noting that "[t]he terms 'false arrest' and 'false imprisonment' are virtually synonymous," explaining that "damages may be awarded for false arrest only for the period from initial custody until arraignment; subsequent damages resulting from continued incarceration are attributable only to the tort of malicious prosecution"); 1 Dan B. Dobbs, The Law of Torts § 39 n.2 (2001) ("Once a formal charge has been made and the plaintiff is confined by judicial order after arraignment, the false imprisonment is terminated and the claim for any remaining damages must ordinarily be one for malicious prosecution."). Indeed, there are good reasons to view the tort of false arrest and imprisonment as it was characterized by this Court in *Heck*. After all, "an action for false imprisonment redresses the violation of plaintiff's freedom of movement and not freedom from unjustifiable litigation." *Broughton v. State*, 335 N.E.2d 310, 316 (N.Y.), cert. denied, 423 U.S. 929 (1975). Accordingly, the pre-

vailing common-law rule is that "[w]here a plaintiff successfully establishes liability for false imprisonment his damages will be measured only to the time of arraignment or indictment whichever occurs first." *Ibid.* Accord, *e.g.*, *Asgari v. City of Los Angeles*, 937 P.2d 273, 281 (Cal. 1997).

Petitioner can identify only one case that provides any support whatever for his position on damages, and even that is a slender reed. *Simanton v. Caldbeck*, 121 A. 411 (Vt. 1923), holds that a plaintiff who is successful on a false imprisonment claim may recover as damages the attorney's fees and costs he incurred in defending himself during an ensuing criminal prosecution. See *id.* at 412.[20] At the outset, of course, this is not petitioner's rule at all. Petitioner seeks a far greater measure of damages than was approved in *Simanton*. In any event, the weight of authority is that expenses incurred in the defense of a criminal prosecution are not recoverable in a false imprisonment action. See, *e.g.*, *Fidelity & Deposit Co. v. Adkins*, 130 So. 552, 553 (Ala. 1930); *Barnes v. District of Columbia*, 452 A.2d 1198, 1200 (D.C. 1982); *City of Miami Beach v. Bretagna*, 190 So. 2d 364, 365-66 (Fla. Dist. Ct. App. 1966); *Broughton*, 335 N.E.2d at 316.

Aside from *Simanton*, petitioner relies on what he describes as "[t]he 'almost universal rule' . . . that a claim for false imprisonment accrues on the termination of the imprisonment." Pet. Br. 24. But, as the case on which he primarily relies, *Collins v. Los Angeles County*, 50 Cal. Rptr. 586 (Cal. Dist. Ct. 1966), explains, the "termination of the imprisonment" that triggers accrual is "not at the time the

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[20] Although petitioner also cites *Bonesteel v. Bonesteel*, 30 Wis. 511, 1872 WL 3125 (1872), it holds only that a plaintiff bringing a false imprisonment claim may recover "counsel fee and expenses in procuring his discharge from arrest." 1872 WL 3125, at *3. It does not indicate that these damages would include attorney's fees incurred in the defense of a subsequent prosecution.

proceedings under which plaintiff's arrest occurred ended." *Id.* at 588. Indeed, *Collins* describes *Belflower v. Blackshere*, 281 P.2d 423 (Okla. 1955), as "[a] leading case" on this point, 50 Cal. Rptr. at 588, and in *Belflower* the court held that the statute of limitations begins to run on a false arrest and imprisonment claim "at the time the plaintiff was released from his alleged illegal restraint and not when the proceedings by which his arrest occurred terminated." 281 P.2d at 425. Similarly, another case *Collins* cites is *Knickerbocker Steamboat Co. v. Cusak*, 172 F. 358 (2d Cir. 1905), and in that case the court explained that the "practically unanimous" view is that "in an action solely for false imprisonment, the termination of the criminal proceedings is immaterial." *Id.* at 359. Most of the cases petitioner cites, like *Collins*, hold only that a claim for false imprisonment accrues when the plaintiff is released from custody upon charging, either on bail or otherwise.[21] And not a single one holds that accrual should be delayed until the termination of the underlying criminal prosecution.

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[21] See *Collins*, 50 Cal. Rptr. at 589; *Stanford v. City of Manchester*, 539 S.E.2d 845, 847 (Ga. Ct. App. 2000); *Matovina v. Hult*, 123 N.E.2d 893, 896-98 (Ind. App. 1955); *Jedzierowski v. Jordan*, 172 A.2d 636, 637 (Me. 1961); *Heron v. Strader*, 761 A.2d 56, 59-60 (Md. 2000); *Nawrocki v. Eberhard Foods, Inc.*, 180 N.W.2d 849, 851 (Mich. Ct. App. 1970); *Stafford v. Muster*, 582 S.W.2d 670, 674, 680 (Mo. 1979); *Jackson v. New York City Police Department*, 500 N.Y.S.2d 553, 554 (App. Div. 1986); *Mobley v. Broome*, 102 S.E.2d 407, 409 (N.C. 1958), overruled on other grounds by *Fowler v. Valencourt*, 435 S.E.2d 530 (N.C. 1993); *O'Fallon v. Pollard*, 427 N.W.2d 809, 811-12 (N.D. 1988); *Belflower*, 281 P.2d at 425-26; *Nave v. City of Seattle*, 415 P.2d 93, 94-95 (Wash. 1966); *Oosterwyk v. Bucholtz*, 27 N.W.2d 361, 362 (Wis. 1947). Petitioner's other cases are even further afield. Two involve claims that the plaintiff was falsely imprisoned in a mental hospital, which are far from analogous to pretrial or post-conviction incarceration. See *Kirwan v. State*, 320 A.2d 837 (Conn. Super. Ct. 1974); *Adler v. Beverly Hills Hospital*, 594 S.W.2d 153 (Tex. Civ. App. 1980). In another, the plaintiff was held, apparently without process, in various jails and military prisons during the Civil War. See *Huggins v. Toler*, 64 Ky. (1 Bush) 192 (1866).

Beyond that obvious problem with petitioner's reliance on the tort of false arrest and imprisonment, he also fails to take account of this Court's explanation in *Heck* that the reason accrual should be delayed on constitutional torts akin to the common-law tort of malicious prosecution is because "[o]ne element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." 512 U.S. at 484. Petitioner does not even claim that the tort of false arrest and imprisonment ever had a similar requirement of termination of the antecedent criminal prosecution in a manner favorable to the accused. Indeed, not a single case petitioner cites holds that an action for false arrest and imprisonment accrues only when a criminal prosecution terminates in a manner favorable to the accused.

2. A Fourth Amendment claim is not akin to a common-law claim for malicious prosecution.

Petitioner also argues that his Fourth Amendment claim can be analogized to a malicious prosecution claim on which the common law delayed accrual until the accused received a favorable termination. See Pet. Br. 27-29. Petitioner, however, presses no malicious prosecution theory of liability; to the contrary, although he included a state-law malicious prosecution claim in his original complaint, he later agreed to the dismissal of that claim with prejudice. R. 17 at 3. Petitioner rightly abandoned his malicious prosecution theory; the record did not indicate that the charges against him were dropped because the prosecutor had concluded that he was innocent, but only because the confession had been suppressed as a fruit of an illegal detention. This was insufficient to satisfy the common-law favorable termination requirement, which requires a final disposition "to indicate the innocence of the accused." Restatement (Second) of Torts § 660 cmt. a (1965). See also *Swick v. Liautaud*, 662 N.E.2d 1238, 1243 (Ill. 1996) (a malicious prosecution claim may be predicated

on a prosecutor's decision to *nolle prosequi* only where the "plaintiff establishes that the *nolle prosequi* was entered for reasons consistent with his innocence").

More important, petitioner's effort to analogize a Fourth Amendment action to a common-law suit for malicious prosecution is deeply unpersuasive. As we explain in Part I.A above, Fourth Amendment claims do not turn on the outcome of an antecedent prosecution, and for that reason they are fundamentally different from the claim forwarded in *Heck*. Because Heck agreed that proof that he was wrongfully convicted was essential to his claim, the Court held that the claim could not accrue as long as his conviction was outstanding. See 512 U.S. at 479 & n.2, 490.[22] Heck asserted no Fourth Amendment claim, and with good reason. As we explain in Part I.A, the Fourth Amendment regulates unreasonable search and seizure, not unwarranted prosecutions; and it protects the innocent and guilty alike. But while Heck wished to attack his prosecution and therefore disclaimed reliance on the Fourth Amendment, petitioner presses only a Fourth Amendment claim in this Court, and therefore necessarily seeks liability not for his prosecution—which was, after all, undertaken by a prosecutor and not the detectives—but instead for an allegedly unreasonable seizure. Such an action bears no relation to the tort of malicious prosecution. Cf. *Albright*, 510 U.S. at 279 n.5 (Ginsburg, J., concurring) (noting that a "'malicious prosecution' theory" against police officers "is anomalous" because "[t]he principal player in carrying out a prosecution . . . is not police

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[22] Heck's concession was warranted. For example, Heck's claim that exculpatory evidence was suppressed necessarily required proof of wrongful conviction. Under *Brady v. Maryland*, 373 U.S. 83 (1963), the suppression of exculpatory evidence violates the Due Process Clause only when there is a reasonable probability that the suppressed evidence would have affected the outcome of the trial. See, *e.g.*, *Strickler v. Greene*, 527 U.S. 263, 280-82 (1999); *Kyles v. Whitely*, 514 U.S. 419, 434-35 (1995).

officer but prosecutor").[23] Accordingly, there simply is no persuasive analogy between Fourth Amendment and malicious prosecution claims.[24]

3. A Fourth Amendment claim is not analogous to an attorney malpractice claim.

Petitioner's reliance on attorney malpractice cases (see Pet. Br. 31-32), is even more misplaced. Petitioner makes two points in this regard, both of which are readily dismissed.

First, petitioner notes that a majority of States considering the issue have held that a plaintiff must show exoneration by post-conviction relief before he may sue his defense lawyers. See Pet. Br. 31. Tellingly, petitioner neglects to mention that

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[23] Under Illinois law, prosecutions for violations of state law are undertaken not by police officers or even their municipal employers, but by an independent official, the State's Attorney for the relevant county. See 55 ILCS 5/3-9005(a)(1) (2004).

[24] The cases that petitioner cites on this point (see Pet. Br. 27 n.16) offer him little aid. Several were brought by plaintiffs not charged with a crime, and they therefore shed no light on the question whether the Fourth Amendment addresses an allegedly unwarranted prosecution. See *Washington v. County of Rockland*, 373 F.3d 310, 315-17 (2d Cir. 2004); *Estate of Smith v. Marasco*, 318 F.3d 497, 521-22 (3d Cir. 2003), opinion following remand, 430 F.3d 140 (3d Cir. 2005); *Lambert*, 223 F.3d at 259. Others involved plaintiffs who were released shortly after arrest and had the charges against them dismissed before trial. See *Grubbs v. Bailes*, 445 F.3d 1275, 1278 (10th Cir. 2006); *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004); *Thacker v. City of Columbus*, 328 F.3d 244, 251, 258-59 (6th Cir. 2003). And two of the three plaintiffs who actually went to trial were acquitted, so there was no question that they—unlike petitioner—were able to show favorable termination. See *Wood v. Kesler*, 323 F.3d 872, 876 (11th Cir.), cert. denied, 540 U.S. 879 (2003); *Moran v. Clarke*, 296 F.3d 638, 642 (8th Cir. 2002). Finally, *Pierce v. Gilchrist*, 359 F.3d 1279 (10th Cir. 2004), was brought by a former prisoner after DNA evidence demonstrated that he was "factually innocent" and his conviction was vacated. *Id.* at 1294. Thus there was no question that he, too, could show favorable termination.

these States have also held that such a plaintiff must further prove actual innocence. See *Canaan v. Bartee*, 72 P.3d 911, 915-16 (Kan.) (collecting cases from other states), cert. denied, 540 U.S. 1090 (2003); *Levine v. Kling*, 123 F.3d 580, 582 (7th Cir. 1997); *Trobaugh v. Sondag*, 668 N.W.2d 577, 582 (Iowa 2003); *Robinson v. Southerland*, 123 P.3d 35, 43 (Okla. Civ. App. 2005). Moreover, as with all negligence claims, a plaintiff asserting legal malpractice must establish that the attorney's negligence was the actual and proximate cause of injury—that but for his attorney's negligence, the proceedings would have turned out differently. See, *e.g.*, *Glaze v. Larsen*, 83 P.3d 26, 30-31 (Ariz. 2004) (citing Restatement (Third) of the Law Governing Lawyers § 53 cmt. d (2000)). Thus, an attorney malpractice claim is different from a false arrest claim, which, as we have explained, may go forward regardless of whether the plaintiff is prosecuted or convicted. An attorney malpractice claim may well be akin to a malicious prosecution claim, where the inability to prove favorable termination precludes recovery. But, as we also explain above, petitioner's Fourth Amendment claim cannot properly be analogized to a claim for malicious prosecution.

Second, petitioner notes that concerns about "'a severe and negative impact on the functioning of the criminal justice system'" occasioned by the early filing of attorney malpractice suits against defense counsel have guided courts when determining accrual for such claims, and he suggests that similar policy-based considerations should dictate the accrual rule applicable to false arrest claims. Pet. Br. 32 (quoting *Glaze*, 83 P.3d at 32). But, the policy-based considerations that support delayed accrual in attorney malpractice cases are not present here. Delayed accrual of attorney malpractice claims is justified, as one of the cases on which petitioner relies explains, because

> [i]f the criminal defendant were required to institute a civil malpractice suit while his case was still pending in the courts, counsel might well be disqualified from

> further handling of the criminal case, or at the very least be discouraged from doing so. It is also quite likely that even if the attorney remains on the case after being made a party in the civil suit, he would be distracted from the job before him by defending against the civil negligence claims.

Glaze, 83 P.3d at 31. Requiring criminal defendants to immediately file false arrest claims raises no concerns about attorney disqualification. To the contrary, a defense attorney may readily prepare the section 1983 claim at the same time he prepares the suppression motion, for both filings will be premised on the same allegations. Nor is there any basis to fear distraction by an attorney involved in both the criminal case and a civil rights case for false arrest—most obviously, because the civil rights case is not against the attorney.

But again, the most fundamental flaw in petitioner's analogy is the same one that infects his reliance on malicious prosecution. As we explain above, Fourth Amendment rights turn on a search or seizure, not an antecedent legal proceeding. Petitioner's reliance on the accrual rule for attorney malpractice cases therefore is misplaced.

B. Damages Associated With A Criminal Prosecution Are Not Available On A Fourth Amendment Claim.

None of petitioner's common-law analogies supports his accrual rule. If anything, the common-law tort of false arrest and imprisonment provides the best analogy to a Fourth Amendment claim—since neither turns on the outcome of ensuing criminal proceedings—but that tort utilizes neither the accrual nor the damages rule urged by petitioner. Of course, any effort to find an analogy in common law for petitioner's Fourth Amendment claim in order to determine what damages are recoverable and when it accrues is necessarily inexact. As this Court has explained, section 1983 "ha[s] no precise counterpart in state law. . . . Therefore, it is the purest coincidence when state statutes or the

common law provide for equivalent remedies; any analogies to those causes of action are bound to be imperfect." *Wilson*, 471 U.S. at 272 (internal quotations and citation omitted). See also *Heck*, 512 U.S. at 492-96 (Souter, J., concurring in the judgment). Accordingly, "the elements and prerequisites for recovery of damages appropriate to compensate injuries caused by the deprivation of one constitutional right" are to be determined "with reference to the nature of the interests protected by the particular constitutional right in question." *Carey v. Piphus*, 435 U.S. 247, 264-65 (1978). And because the Fourth Amendment regulates search and seizure, not unwarranted prosecutions, damages associated with the criminal process are not recoverable under section 1983.

As its text makes plain, the Fourth Amendment "protects two types of expectations, one involving 'searches,' the other 'seizures.'" *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). "A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property." *Horton v. California*, 496 U.S. 128, 133 (1990). Accord, *e.g.*, *Soldal v. Cook County*, 506 U.S. 56, 66 (1992). Once a criminal prosecution commences, the interests at stake are quite different from those compromised by a constitutionally unreasonable search or seizure.

The purpose of a criminal prosecution is to ascertain the guilt or innocence of the defendant—including, as the exclusionary rule dictates, the admissibility of incriminating evidence. Society has a compelling interest in permitting the full and fair litigation of criminal cases—including its interest in ascertaining whether the antecedent investigation complied with the Fourth Amendment. Thus, it is difficult at best to characterize a criminal prosecution as compromising the interests protected by the Fourth Amendment. The decision of a prosecutor to go forward in the face of a potential Fourth Amendment claim has never itself been considered an affront to Fourth Amendment interests—it merely allows an authori-

tative determination of the criminal defendant's Fourth Amendment rights to be made. In *Gerstein*, for example, the Court rejected the view that the Fourth Amendment entitles "the accused . . . to judicial oversight or review of the decision to prosecute." 420 U.S. at 119. And as we explain in Part I.A above, this Court has made clear that the use of evidence obtained in violation of the Fourth Amendment in a criminal proceeding is not considered an affront to the Fourth Amendment itself—the exclusionary rule is instead justified as a remedy for an antecedent Fourth Amendment violation.

It follows that damages associated with a criminal prosecution are outside the ambit of the interests protected by the Fourth Amendment. Dean Jeffries has observed that when an unreasonable search and seizure produces incriminating evidence,

> [t]he person searched would face the prospect of criminal charge, trial, conviction, and punishment. In some circumstances, the exclusionary rule would bar use of the illegally obtained evidence, but that is not invariably so, and in any event the accusation is in itself injurious. Harms associated with criminal accusation and trial would certainly be foreseeable (indeed, desired) consequences of an unlawful search. If all such injury were compensable, however, the result would be a radical disparity between the kind of harm against which protection is desired (unreasonable invasion of privacy) and the kind of harm for which compensation would be sought (criminal prosecution and trial). A regime compensating individuals for all injury caused by government unconstitutionality would end up awarding money damages to offset losses that should be attributed to (and that are also "but for" caused by) the claimant's own misconduct. The result would be a wealth transfer from society generally to those guilty of criminal wrongdoing. The prospect is peculiar, if not perverse.
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> . . . .

> [I]njury from criminal prosecution can scarcely be considered a societal wrong. Enforcement of the criminal laws is a good thing. The costs imposed on violators are not constitutionally disapproved, but morally right and socially useful. The concern of the fourth amendment is not to curtail criminal prosecution, but to avoid unfounded (and therefore abusive) invasions of privacy. Compensation for violations of the fourth amendment should redress invasions of privacy, not the costs of criminal prosecution.

John C. Jeffries, *Damages for Constitutional Violations: The Relation of Risk to Injury in Constitutional Torts*, 75 Va. L. Rev. 1461, 1474-75 (1989) (footnote omitted). The author of the dissenting opinion below has taken the same view. In an opinion on which petitioner otherwise relies, Judge Posner, after observing that "[a] basic principle of tort law . . . is that liability is limited to the harm that the statute or common law doctrine that created the liability was intended to deter," concluded that "the Fourth Amendment is aimed at deterring unreasonable searches and seizures, not malicious prosecutions." *Gauger v. Hendle*, 349 F.3d 354, 363 (7th Cir. 2003).[25]

To be sure, Fourth Amendment law aims at the deterrence of unreasonable search and seizure. The exclusionary rule, however, is thought to provide the requisite deterrence, and it is employed in contexts where it is likely to have efficacy as a deterrent. See, *e.g.*, *Hudson*, 126 S. Ct. at 2163; *Scott*, 524 U.S. at 362-63. Indeed, the exclusionary rule has already operated in petitioner's favor in the underlying criminal case against him. Petitioner's reliance on the Fourth Amendment

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[25] In fact, five Circuits have concluded that no damages associated with a criminal prosecution are recoverable on a Fourth Amendment claim. See *Gauger*, 349 F.3d at 362-63; *Hector v. Watt*, 235 F.3d 154, 157-60 (3d Cir. 2000); *Townes v. City of New York*, 176 F.3d 138, 147-48 (2d Cir.), cert. denied, 528 U.S. 964 (1999); *Brooks*, 85 F.3d at 181-82; *Calero-Colon v. Betancourt-Lebron*, 68 F.3d 1, 4 (1st Cir. 1995).

for a damages remedy for the criminal prosecution—in addition to the damages remedy for his antecedent illegal arrest to which petitioner would concededly be entitled had he brought suit in a timely fashion—is therefore unavailing.

In short, what happens during the course of a criminal prosecution following an allegedly unconstitutional search or seizure simply is not within the scope of the interests for which the Fourth Amendment supports compensation. A Fourth Amendment constitutional tort does not concern itself with the manner in which persons are prosecuted—it is concerned with the antecedent search and seizure. Other constitutional provisions protect against unwarranted prosecutions—including the due process requirements of counsel, reasonable bail, and the right to a speedy and fair trial. See, *e.g.*, *Baker v. McCollan*, 443 U.S. 137, 144-46 & n.3 (1979). But petitioner does not forward a due process claim; only a Fourth Amendment claim is before the Court. Damages associated with a criminal prosecution simply are not recoverable under a constitutional provision that addresses "searches and seizures," and not criminal prosecution. For that reason, there is no justification for delaying accrual of a Fourth Amendment section 1983 claim until a related criminal prosecution has ended.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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